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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6696 OF 2006

Kamlesh D. Bhatt Petitioner
versus
Borivali Shiv Sadan CHS Ltd.
and others Respondents

Mr.R.S.Apte i/by Vaibhav Patankar for petitioner.
Mr.M.K.Jariwala for respondent no.1.

CORAM : A.S.OKA, J.
DATE : 24th April 2007

PC :

1. Submissions of the learned counsel appearing for the parties were heard on the last date. The main contention of the petitioner is that the order passed by the Deputy Registrar of Co-operative Societies issuing a Certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 was passed without notice to the petitioner. The submission of the learned counsel for the petitioner was that as there is no service of notice to the petitioner before passing the impugned order, the order of remand may be passed. He stated that a sum of Rs.50,000/- has already been deposited by the petitioner in this Court on the basis of the order dated 10th October 2006 passed by this

Court. He stated that within a period of three months from today, the petitioner is ready and willing to pay a further amount of Rs.30,000/- to the first respondent without prejudice to his rights and contentions. The learned counsel appearing for the first respondent submitted that a remedy of preferring a revision application under section 154 of the said Act of 1960 is available to the petitioner and therefore, this writ petition ought not be entertained. He submitted that the notice issued to the petitioner by the Deputy Registrar has been returned unserved with the remark "not claimed" and therefore it was rightly treated as good service. He submitted that no interference is called for.

2. The petitioner had preferred Writ Petition No.5362 of 2006 in this Court for challenging the same order. By order dated 5th September 2006 passed by this Court, the petitioner was permitted to withdraw the said petition with a liberty file a fresh petition. On 10th October 2006, this Court entertained the petition by issuing notice and by granting ad-interim relief subject to deposit of an amount of Rs.50,000/-. Now, the petitioner has agreed to deposit a

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further sum of Rs.30,000/- in addition to a sum of Rs.50,000/- already deposited in this Court. The total amount deposited by the petitioner will be approximately 50% of the amount due and payable on the basis of the certificate issued under section 101 of the said Act of 1960. The deposit of 50% of the amount of claim is a condition precedent for entertaining a revision application.

3. I have perused the record. It is true that the postal envelope has come back with an endorsement "not claimed". There is no clear endorsement on the envelope regarding the date of posting of the intimation. No evidence has been led to prove the service of intimation. The fact remains that the petitioner was not heard before the order was passed by the Deputy Registrar. The petitioner has agreed to pay a substantial amount out of which a sum of Rs.50,000/- has already been deposited. Subject to deposit of further amount of Rs.30,000/-, one opportunity deserves to be granted to the petitioner to contest the application made by the first respondent. The first respondent will have to be permitted to withdraw the sum of Rs.50,000/- deposited by the petitioner in this Court subject

to outcome of the proceedings and subject to adjustment in future. The sum of Rs.30,000/- will have to be paid by the petitioner to the first respondent.

4. Hence, I pass following order :-

(a) The impugned order dated 28th February 2006 passed by the learned Deputy Registrar of Co-operative Societies in Case No.238 of 2005 is quashed and set aside subject to petitioner paying a sum of Rs.30,000/- (Rs.Thirty thousand only) to the first respondent on or before 13th July 2007;

(b) The payment of the said amount will be without prejudice to the rights and contentions of both the parties and subject to the final outcome of the application under section 101 of the Act of 1960;

(c) If the amount is not paid by the petitioner within the stipulated period, the order impugned will stand and it will be open for the first respondent to recover outstanding amount from the petitioner on the basis of Recovery Certificate already issued under section 101 of the said Act

of 1960;

(d) On the petitioner producing a proof of payment of Rs.30,000/- within the stipulated time, the Deputy Registrar, Co-operative Societies, "R" Ward, Malhotra House, Mumbai, will permit the petitioner to file a reply and to contest the application made by the first respondent. The application will be disposed of expeditiously and in any event within a period of four months from the date on which a sum of Rs.30,000/- is paid by the petitioner to the first respondent;

(e) It will be open for the first respondent to withdraw a sum of Rs.50,000/- (Rs.Fifty thousand only) deposited by the petitioner in this Court. The withdrawal will be subject to the outcome of the application filed by the respondent no.1 and subject to further adjustments;

(f) All contentions of the parties on merits are expressly kept open;

(g) It is clarified that so far as prayer (b) is concerned, it is for the petitioner to adopt appropriate remedy;

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(h) Petition disposed of in the above terms.

(A.S.OKA, J.)